118 U.S. 220.

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1885.**

No. 254.

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JAMES K. JOHNSON, E. J. CARO, MATILDA C. DUVAL, AND IRENE C. WILLIAMS, PLAINTIFFS IN ERROR,

*vs.*

WILLIAM H. HUTCHINSON, SHERIFF *EX-OFFICIO*, ADMINISTRATOR *DE BONIS NON* OF THE ESTATE OF JAMES RUSHTON, DECEASED.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

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**FILED AUGUST 11, 1883.**

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1 *Title of Cause.*

Pleas in the circuit court of the United States for the fifth judicial circuit and northern district of Florida at Pensacola, Florida, in a certain cause at common law, to wit, in ejectment therein, wherein Wm. H. Hutchinson, sheriff of Escambia county, in the State of Florida, and *ex-officio* administrator *de bonis non* of the estate of James Rushton, deceased, is plaintiff, and James K. Johnson is defendant:

Be it remembered that on the sixth day of March, anno Domini eighteen hundred and eighty-two, came the defendant herein, by his attorney, J. D. Thompson, Esq., and filed in the clerk's office of the said circuit court a transcript of the record of the orders and proceedings had in the said cause in the circuit court of the State of Florida for the first judicial circuit, in and for the county of Escambia, in the words and figures following, to wit:

Pleas in the circuit court of the State of Florida for the first judicial circuit, in and for the county of Escambia, in a certain cause therein, wherein W. H. Hutchinson, sheriff of Escambia county and *ex-officio* administrator *de bonis non* of James Rushton, deceased, is plaintiff, and James K. Johnson is defendant:

Be it remembered that on the 7th day of July, in the year of our Lord one thousand eight hundred and eighty-one, the plaintiff came, by his attorneys, C. C. Yongo & E. A. Perry, and filed in the
2 clerk's office of the circuit court aforesaid his *precipe* for a summons *ad respondendum*, in the words and figures following, to wit:

*Precipe.*

1st Circuit, State of Florida, Escambia, Circuit Court, August rules, 1881.

W. H. HUTCHINSON, Sheriff of Escambia county and *ex-officio* Administrator *de bonis non* of JAMES RUSHTON.

Act of ejectment for lot one in block four, in old city of Pensacola, according to plan of Penlado, containing one-half acre, fronting on Palofox street.

The clerk will please issue writ of ejectment as above, and mesme profits $1,000, directed to some justice of the peace as *ex officio* coroner, the sheriff being interested.

July 15th, 1881.

(Signed) C. C. YONGE & E. A. PERRY,
*Att'ys for Pl'ff.*

Whereupon a summons *ad respondendum* issued from the clerk's office aforesaid, which, with the return and endorsements thereon is, in the words and figures following:

*Summons.*

THE STATE OF FLORIDA,
*Escambia County, Circuit Court,* } ss:

To the sheriff of said court or any other lawful officer, Greeting:

We command you that you summons James K. Johnson to be and appear before the honorable the judge of our circuit court for the county of Escambia, at a court to be holden at the court-house, in the city of Pensacola on the first Monday, being rule day, and the 1st day of August next to answer the complaint of W. H.
3 Hutchinson, sheriff of Escambia county and *ex-officio* adm'r *de bonis non* of James Rushton in an action of ejectment; damages claimed, $——. This you shall in no wise omit under the penalty of the law; and have you then and there this writ, with your proceedings endorsed thereon.

Witness, F. E. de la Rua, clerk of our said court, at the court-house aforesaid, this 21st day of July, A. D. 1881.

[Seal of Court.]

(Signed) F. E. DE LA RUA,
*Clerk C't Court.*

*Description of Property sued for.*

For lot one in block four, in old city of Pensacola, according to the plan of Penlado, containing one-half acre, fronting on Palafox street; mesme profits, $1,000.

Endorsed: W. H. Hutchinson, sheriff of Escambia county and *ex off'o* adm'r *de bonis non* of James Rushton, *vs.* James K. Johnson. Writ of ejectment issued July 21st, 1881.

*Sheriff's Return.*

Executed by leaving a copy of within with the defendant's partner in business, at his place of business, July 22d, 1881.

(Signed) N. C. SHACKELFORD,
*County Judge and ex-officio Justice of the Peace.*

4 And on the same day last-named came the said plaintiff, by his attorneys, and filed herein his declaration in the words and figures following, to wit:

*Declaration.*

1st Circuit, State of Florida.

STATE OF FLORIDA,
*Escambia Circuit Court, Escambia County,* } *To wit:*

W. H. Hutchinson, sheriff of Escambia county and *ex officio* administrator of James Rushton, dec'd, late of said county, complains of James K. Johnson, who has been summoned to answer him in an action of ejectment, for that whereas the defendant is in possession of a certain tract or parcel of land situate, lying, and being

in said county, known and described as lot one in square four, according to the Penlado plan of the old city of Pensacola, fronting on Palafox street in said city, with the improvements thereon, containing one-half acre, to which the plaintiff claims title as administrator as aforesaid, and defendant has received the profits thereof since the 1st day of January, A. D. 1880, of the yearly value of $500, and refuses to deliver the possession of the said land to plaintiff, or to pay him the profits thereof.

(Signed) C. C. YONGE &
E. A. PERRY,
*Att'ys for Pl'ff.*

*Bill of Particulars.*

Lot 1, sq'e 4. Penlado plan of old city of Pensacola; mesme profits, $1,000.

5 *Appearance.*

And afterwards, to wit, on the 1st day of August, A. D. 1881, the defendant, by his attorneys, B. Labuzan & A. Cuthbert, entered his appearance herein.

And at another day, to wit, on the 15th day of August, A. D. 1881, came the defendant, by his attorneys, and filed herein his pleas in the words and figures following, to wit:

*Pleas.*

Circuit Court of Escambia *Court*, Florida.

THE STATE OF FLORIDA, *Escambia County:*

W. H. HUTCHINSON, Adm'r *de bonis non* of James Rushton, Dec'd,
*vs.*
JAMES K. JOHNSON.

The defendant, for answer to plaintiff's complaint against him, says he is not guilty of unlawfully detaining & withholding said land in plaintiff's complaint mentioned from him.

(Signed) JOHN A. CUTHBERT.
(Signed) B. LABUZAN.

And at another day, to wit, on the 12th day of October, came the said defendant and filed herein his amendment to plea filed in the words and figures following, to wit:

*Amendment to Pleas Filed.*

In Escambia Circuit, 1st Judicial Circuit of Florida.

WM. H. HUTCHINSON, Sheriff and *Ex-officio* Adm'r *De Bonis Non* of James Rushton, Deceased,

6 *vs.*

JAMES K. JOHNSON.

Ejectment.

The defendant in the above suit, by way of amendment to his

plea and answer filed in the above suit heretofore, says that he is the lessee for a term of years of Chas. Ahrens, as agent for E. J. Caro, Matilda C. Duval, and Irene C. Williams, of the city and county of Mobile, State of Alabama, non-residents, which said parties are the owners of said property, and not this defendant. The defendant, therefore, says that as to the plaintiff in this suit he is not guilty. And of this the defendant puts himself upon the country, &c.

(Signed) J. D. THOMPSON,
*Defendant's Attorney.*

James K. Johnson, being sworn, says that to the best of his knowledge and belief the above plea is true.

(Signed) JAS. K. JOHNSON.

Sworn to before me, this Oct. 12th, 1881.

(Signed) T. E. DE LA RUA,
*Clerk C't Court.*

(Signed) Per JOHN DE LA RUA,
*Deputy Clerk.*

And afterwards, to wit, on the 21st day of October, A. D. 1881, came the said defendant & petitioner's attorney & filed herein their petition for removal of case to the U. S. court for the fifth circuit, northern district of Florida, in the words & figures following, to wit:

7 *Petition for Removal.*

In Escambia Circuit Court, 1st Judicial Circuit of Florida.

W. H. HUTCHINSON, Sheriff & *ex-officio* Adm'r *de bonis non* of James Rushton,
*vs.*
JAMES K. JOHNSON.

Ejectment.

To Hon. A. E. Maxwell, judge of said court:

The petition of Edward J. Caro, Matilda C. Duval, and Irene C. Williams respectfully showeth unto your honor that the property involved in dispute in the above suit is the property of your petitioners; that they are seised and possessed of the same in fee-simple; that they not only hold the same by hereditary and lined descent, but that more than four years ago in a suit between your petitioners and Joseph Wyer, in which the title of said property was fully investigated by the United States court for the fifth circuit, northern district of Fla., a judgment was regularly obtained in favor of your petitioners.

Your petitioners further alleges that James K. Johnson, defendant in the above suit, is their lessee, and has no title or interest in said property whatever; that it is their title that is practically questioned, and that according to the laws of Florida your petitioners are the real defendants in the suit; that said property is worth more than five hundred dollars over and above all costs; therefore may it please your honor to grant unto your petitioners an order directed to the

clerk of said court, commanding him to certify all the proceedings had herein to the circuit court of the United States for the
8 5th circuit and northern district of Florida, for such proceeding to be had herein as said court shall decide upon the ground that your petitioners are now residents, they being citizens and residents of the city and county of Mobile and State of Alabama. And your petitioners, as in duty bound, will ever pray, & etc.

(Signed) J. D. THOMPSON,
*Att'y for Petitioners.*

STATE OF FLORIDA, *Escambia County:*

J. D. Thompson, attorney for petitioners, being duly sworn, says: That to the best of his knowledge and belief the allegations of the foregoing petition are true.

(Signed) J. L. THOMPSON.

Sworn to before me this 21st day of October, A. D. 1881.

[SEAL.] (Signed) N. C. SHACKELFORD,
*County Judge.*

And another day, to wit, on the 22d day of October, A. D. 1881, the following order for removal of case was made:

*Order for Removal of Case.*

In Escambia Circuit Court, 1st Judicial Circuit of Florida.

W. H. HUTCHINSON, Sheriff & *ex-off'o* Adm'r *de bonis non* of James Rushton, dec'd,
*vs.*
JAMES K. JOHNSON.

Ejectment.

This day this cause came on to be heard upon the petition
9 of Edward J. Caro, Matilda C. Duvall, and Irene C. Williams, and it appearing from the facts stated in said petition that the real defendants in said suit are the said Edward J. Caro, Matilda C. Duvall, and Irene C. Williams, and that they are non-residents, being citizens and residents of the city and county of Mobile and State of Alabama:

Now, upon motion of J. D. Thompson, attorney for defendants, it is ordered that the clerk of said court do certify all and singular the proceedings had herein into the circuit court of the United States for the 5th circuit, northern district of Florida, for such proceedings to be had therein as said court shall order.

And it is further ordered that the defendants do give bond in the penal sum of two hundred and fifty dollars, to be approved by this court.

Done and ordered the 22d day of October, A. D. 1881.

(Signed) A. E. MAXWELL,
*Judge Circuit Court, 1st Judicial Circuit of Fla.*

And on the same day last named came the said petitioners, by their attorney, and filed their bond for removal, which bond, with the approval thereon, is in the words and figures following, to wit:

*Bond for Removal.*

STATE OF FLORIDA, *Escambia County:*

Know all men by these presents, that we, James D. Thompson, attorney for Edward J. Caro, Matilda C. Duvall, and Irene C.
10 Williams, and A. V. Caro and A. L. Pollock, are held and firmly bound unto W. H. Hutchinson in the penal sum of two hundred and fifty dollars, for the payment whereof, well and truly to be made, we bind ourselves, heirs, executors, and administrators, formally by these presents.

Signed and sealed this 22d day of October, A. D. 1881.

The condition of this bond is such that whereas the said James D. Thompson, attorney as aforesaid, has applied for and obtained from the circuit court of said county an order for the transfer of a cause therein pending, wherein the said Hutchinson is plaintiff, to the circuit court of the United States for the fifth circuit, northern district of Florida:

Now, if the said J. D. Thomson shall well and truly file, or cause to be filed, a full and correct transcript of all papers and documents pertain-g to said cause in the said United States court, or before the first day of the next term, then this obligation to be void; otherwise, to remain in full force and effect.

Taken and approved by me this 22d day of October, A. D. 1881.

(Signed) JAMES D. THOMSON. [SEAL.]
(Signed) A. L. POLLOCK. [SEAL.]
(Signed) A. V. CARO. [SEAL.]
(Signed) A. E. MAXWELL,
*Judge Circuit Court 1st Judicial C't of Fla.*

STATE OF FLORIDA, *Escambia County:*

I, F. E. de la Rua, clerk of the circuit court of the State of Florida, 1st judicial circuit, in and for the county of Escambia, do hereby certify that the foregoing pages, numbered from one to ten, inclusive, constitute a true copy of all the proceedings, and a correct transcript of the record of the judgment, in the case of W. H.
11 Hutchinson, sheriff Escambia county, *ex-officio* adm'r *de bonis non* of James Rushton, plaintiff, and James K. Johnson, defendant, as appears upon the files and records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this the 24th day of October, in the year of our Lord one thousand eight hundred & eighty-one.

[SEAL.] (Signed) F. E. DE LA RUA,
*Clerk of the Circuit Court for the County of Escambia.*

Endorsement: Filed March 6th, 1882. (Signed) W. W. Wharton, Clerk U. S. district court.

And on the seventh day of March, anno Domini eighteen hundred and eighty-two, came the defendant herein by his attorneys, B. Labuzan, Esq., and J. D. Thomson, Esquire, and filed his additional pleas in this cause in the words and figures following, to wit:

*Defendant's Additional Pleas.*

In the United States Circuit Court, 5th Judicial Circuit of the United States, Northern District of Florida.

W. H. HUTCHINSON, Sheriff and *ex-officio* Adm'r *de bonis non* of James Rushton,

*vs.*

JAMES K. JOHNSON.

Action of ejectment.

The defendant, by B. Labuzan and J. D. Thompson, his
12 attorneys, comes and defends the wrong injury, and by leave of the court heretofore asked and obtained, and for additional pleas to plaintiff's declaration, says:

1st. That the said plaintiff ought not to have or maintain his said suit against the said defendants, because the said defendant says that more than twenty years have elapsed since the death of said James Rushton.

2d. That it does not appear from the proper records that an administrator *de bonis non* on said estate of James Rushton was ever appointed.

3d. That the said suit was not brought within seven years next after the accruing of the right of action.

And for further plea in this behalf the defendant says:

That heretofore, to wit, on the 3d day of March, A. D. 1878, in a suit between Edward J. Caro and others, as plaintiffs, against William W. Carr, as administrators of said Rushton, in this honorable court, there was a judgment obtained in favor of the said Edward J. Caro and others aforesaid against the said Carr, as administrator of the said Rushton, and that this defendant now holds possession of the premises in question by lease from the said Caro, &c., at whose instance this suit was brought into this honorable court from the circuit court of the State of Florida, of the first judicial circuit; that the facts and parties described in the former writ and so forth in
13 the said suit against the said Carr, as administrator, is identical with the proceedings herein except that the administration in said suit has been changed, and said suit is for the same property identically, which appears from the records of this honorable court. Wherefore the said defendant prays judgment whether the said plaintiff should be answered in his said declaration, or ought to have or maintain his said suit.

STATE OF FLORIDA, *Escambia County:*

United States of America, 5th Judicial Circuit, Northern District of Florida.

Albert V. Caro, agent for the defendant as well as for Edward J. Caro, etc., being duly sworn, says that the foregoing pleas are true.

(Signed) A. V. CARO.

Sworn to & subscribed before me this 7th day of March, 1882.

[Seal U. S. Circuit Court, District of Florida.]

(Signed) W. W. WHARTON,
*Clerk Circuit Court.*

Endorsement: Filed March 7th, 1882. (Signed) W. W. Wharton' clerk circuit court.

And on the third day of March, anno Domini eighteen hundred and eighty-three, came the plaintiff herein, by his attorney, C. C. Yonge, Esquire, and E. A. Perry, Esquire, and filed his replication and demurrer to defendant's plea heretofore filed in this cause in the words and figures following, to wit:

14 *Plaintiff's Replication & Demurrer to Defendant's Pleas.*

U. S. Circuit Court.

W. H. HUTCHINSON, as Administor *de bonis non* of James Rushton, Dec'd,

*vs.*

JAMES K. JOHNSON.

Ejectment.

The plaintiff, as to def't's pleas of not guilty, filed in State court Aug. 15, '81, and 12th day of October, wherein he puts himself upon the country, doth the like.

Similar as to pleas of general issue.

And as to defendant's additional pleas filed herein March 7th, 1882.

Plaintiff joins issue upon defendant's plea of former judgment, and says there has been no former judgment in any case betwen same parties in valuing same premises.

To the 1st plaintiff demurs, and for grounds of demurrer and matter of law to be argued, plaintiff says that if more than twenty years have elapsed since the death of said James Rushton, that fact is in law no bar to pl'ff's suit, and no ground of defense hereto.

To the 2d plaintiff demurs, and for grounds of demurrer says the said plea is insufficient in law, in that it does not tender a material issue. It is uncertain and indefinite, and if it intends to deny that plaintiff possesses the character in which he sues he does so only by indirection.

To the 3d plaintiff demurs, and for grounds of demurrer says the plea is insufficient in law. It does not set forth any bar by limitation. That in law the limitation begins to run only from the accruing of the cause of action.

(Signed) C. C. YONGE & E. A. PERRY,
*Att'ys for Pl'ff.*

15 U. S. OF AMERICA,
*Northern District of Florida, at Pensacola:*

E. A. Perry, of counsel for pl'ff, certifies that in his opinion the foregoing demurrers are well founded in law.

And he being duly sworn says the same are not filed for delay.

(Signed) E. A. PERRY.

Sworn before me this 3d day of March, 1883.

[SEAL.] (Signed) W. W. WHARTON, *Clerk.*

(Endorsement:) Filed March 3d, 1883. (Signed) W. W. Wharton, clerk.

And on the eighth day of March, anno Domini eighteen hundred & eighty-three, at a stated term of the court, the following proceedings were had, to wit:

*Verdict of Jury & Judgment for Plaintiff.*

WM. H. HUTCHINSON, Sheriff, *ex-officio* Adm'r *de bonis non* of James Rushton, Deceased,
*vs.*
JAMES K. JOHNSON, Tenant; and E. J. CARO, MATILDA C. Duval, and Irene C. Williams, permitted to appear as Landlords, Defendants. } No. 27.

Ejectment.

This cause came on to be heard upon plaintiff's demurrer to defendant's pleas; and after argument of attorneys for plaintiff, and of attorneys for defendants herein:

16 Ordered, That the demurrer filed herein be sustained.

And thereupon issue being joined came the jury, to wit: Jacob Kahn, W. H. Dunbar, W. S. Coleman, Robert Thomas, Martin Poole, J. D. Bowman, A. Cook, R. K. Williams, Robert Eggart, Richard Thackerey, Stephen Burnett, William Oliver, who having been duly tried, sworn, and empanelled to try this cause, the evidence in this cause was to them produced, and after argument of attorneys for plaintiff and for defendant, and the charge of the court, the jury retired, and having deliberated, came into court and returned the following verdict, te wit:

We, the jury, find a verdict for plaintiff, and assess the amount of rent at fifteen dollars per month from January 1st, 1880, to March 1st, 1883, five hundred and seventy dollars.

Whereupon it is therefore considered by the court that the said plaintiff have and recover possession of the premises, as described in

plaintiff's declaration, to wit: "A certain tract or parcel of land situate, lying, and being in the county of Escambia, known and described as lot one in square four, according to the Penlado plan of the old city of Pensacola, fronting on Palafox street, in said city, with the improvements thereon. And that they have and recover from the defendants, E. J. Caro, Matilda C. Duval, and Irene C. Williams, the said sum of five hundred & seventy dollars, together with the costs in this behalf expended; and that plaintiff have his writ of
17 possession and execution therefor; and that the jury be discharged from further consideration of this cause.

EXHIBIT A. Exhibits filed in evidence on the trial of this cause.

In the town of Pensacola, on the twenty-second day of October, in the year one thousand seven hundred and eighty-one, I, John Stephenson, in the presence of witnesses and with the intervention of the signor, Don Arturo O'Neill, lieutenant colonel of the royal armies, political and military governor *ad interim* of this place and its district, do acknowledge that I have sold to Joseph Colbert one hundred and twenty-one feet of ground of the lot known by number one (1), by eighty feet front on Mansfield street, with a house thereon, for the sum of four hundred dollars, cash, which sum I have received in current money from the said Joseph Colbert, and with which I acknowledge myself satisfied at pleasure, and without any claim or title whatsoever to said premises, as having executed the sale of the same in a real and legal form as much as it is required in law.

In testimony whereof, and in order that this may serve the said Joseph Colbert as a title of property, I grant him the present, which I sign before the secretary of this government, in the aforesaid town of Pensacola, on the day, month, and year last mentionsd.

(Signed) JOHN STEPHENSON. [SEAL.]
(Signed) FRANCISCO DE LA RUA, SY. [SEAL.]

This sale was executed with my intervention and the du-
18 plicate of it is on record in this government office, to serve as an original in evidence of the same.

Pensacola, date as above.

(Signed) O'NEILL.

STATE OF FLORIDA, *Escambia County:*

I, F. E. de la Rua, keeper of the public archives of West Florida, do hereby certify that the foregoing is a true and correct copy of the keed from John Stephenson to Joseph Colbert, as the same remains of record in my office in deed book A, at page 8.

Witness my hand and private seal (my seal official being lost or misplaced) at Pensacola, this 22d day of November, A. D. 1882.

(Signed) F. E. DE LA RUA, [SEAL.]
*Keeper of Public Archives of West Florida.*

Endorsement: Filed March 8th, 1883. (Signed) W. W. Wharton, clerk circuit court.

EXHIBIT B. Exhibits filed on the trial of this cause.

Be it known that I, Joseph Colbert, an inhabitant of this place, do bargain and sell, really and effectively, to Benito Caro, also an inhabitant of this place, a house situated on lot known by number one, containing forty feet front, on the principal wharf of this town, by one hundred and twenty-one feet in depth, towards the block house and St. Church, which house and lot, with all the appurtenances
19 thereunto belonging, I purchased from John Stephenson in the year of the capitulation of eighty-one, as appears by a deed duly executed before His Excellency Don Arturo O'Neill, lieutenant colonel of the royal armies, and governor of this place at that time, bearing date twenty-second day of October, same year, and I sold him the lot and house above mentioned, in the condition they are in, free from incumbrance or mortgage, for the sum of five hundred and ninety round silver dollars, which sum I acknowledge to have received and grant a formal receipt, declaring that the aforesaid sum of five hundred and ninety dollars is the precise amount and value of the said house and lot, and if they are or may be worth any more, I yield and renounce the same in favor of the purchaser, and make him a perpetual, irrevocable donation of the same for his lifetime. Whereby I yield the right of property possession, useful dominion, and ownership which I held over said house and lot, and renounce it to the said purchaser in order that he may, as true owner thereof, possess, sell, exchange, or alienate the same at will in virtue of this deed made in his favor in token of a real delivery, whereby it is shown that he has acquired possession of the same without requiring any other proof, from which I relieve him, and bind myself to the eviction and warranty of this sale in all the forms of law, and as may suit the purchaser best, with my property present and to come, renouncing the laws, rights, and privileges, singular and general, permitting me to do otherwise. And I, the said Benito Caro, being present at the execution of this deed, do accept the
20 same, and received as my purchase the said house and lot, for the sum and value as sold, acknowledging its being placed at my disposal, and grant a formal receipt.

In testimony whereof the present is done in the town of Pensacola on the seventh day of the month of August, one thousand seven hundred and eighty-seven. I, the secretary, do hereby certify that I know the parties, and that they acknowledged & signed the present before the instrumental witnesses, who were Vincente Aquiem, Joseph Domingo, and Joseph S. Falcon.

(Signed) JOSEPH COLBERT. [SEAL.]
(Signed) BENITO CARO. [SEAL.]

STATE OF FLORIDA, *Escambia County:*

I, F. E. de la Rua, keeper of the public archives of West Florida, do hereby certify that the foregoing is a true and correct copy of the deed from Joseph Colbert to Benito Caro as the same remains of record in my office, in deed book A, at pages 36 to 37.

Witness my hand and private seal (my seal official being lost or misplaced), at Pensacola, this 22d day of November, A. D. 1882.

(Signed) F. E. DE LA RUA, [SEAL.]
*Keeper Public Archives, West Florida.*

Endorsement: Filed March 8th, 1883. (Signed) W. W. Wharton, clerk circuit court.

EXHIBIT C. Exhibits filed in evidence on the trial of this cause.

21 Be it known that I, Benito Caro, and inhabitant of this town, do acknowledge that I sell, really and effectively, to Gabriel Rivas, of this same vicinity, a house and lot, known by the number one (1), containing eighty feet front by one hundred and twenty-one in depth, situated on the principal wharf, which belongs to me, as having purchased it from Joseph Colbert, as will appear by deeds made in this Government on the seventh of August and thirtieth of June of the years one thousand seven hundred and eighty-seven and one thousand seven hundred and ninety; and I sell him the house and lot aforesaid, with all the appurtenances to the same belonging, and in the conditions they are in, free from incumbrance or mortgage (it not appearing in this Government to have any), for the sum of nine hundred dollars, which I acknowledge to have received, cash in hand, to my satisfaction, and grant a formal receipt; wherefore I divest myself of property, possession, useful dominion, and ownership to and over said house and lot by me had and held, and release, yield, and transfer it to the purchaser, or whomsoever through him claims, as true owner thereof, to possess, sell, exchange, or dispose of the same at pleasure by virtue of this deed, which I make in his favor in token of real delivery; whereby it is shown that he has acquired possession, without requiring any other proof, with which I invest him in form; and I bind myself to the eviction, security, and warranty of this deed in all the form- of law, granting hereby, as inserted, the clause which empowered the justices to be executed, renouncing the laws' rights and privileges in my favor with those in general pro-
22 hibiting the same. And I, the said Gabriel Rivas, being present at the making of this deed, do accept the same, and receive as my purchase the said house & lot for the sum and on the terms as sold, acknowledging its being placed at my disposal, and grant a formal receipt.

In testimony whereof the present is done, in the town of Pensacola, on the twenty-fourth of July, one thousand seven hundred and ninety-seven.

I, Don Vincente Folch, and Juan, lieutenant colonel of infantry. political and military governor of the town aforesaid and its district, and sub-delegate of royal finance of the same, with two assistant witnesses, for want of a clerk, do certify that I know the parties, Signed by the seller and a mark by the purchaser, with me and

the assistant witnesses, before John Moreno, Antonio Ferrera, and Carlos Lavalle, witnesses present.

(Signed) BENITO CARO. [SEAL.]

(Signed) his GABRIEL × RIVAS. mark. [SEAL.]

Before me.

VINCENTO FOLCH. [SEAL.]

(Signed) BENIGNO G. CALDERON. [SEAL.]

(Signed) MILLAU DE LA CARRERA. [SEAL.]

STATE OF FLORIDA, *Escambia County:*

I, F. E. de la Rua, keeper of the public archives of West Florida, do hereby certify that the foreging is a true and correct copy of the deed from Benito Caro to Gabriel Rivas as the same remains of record in my office in deed book A, page 94.

Witness my hand and private seal (my seal official being lost or misplaced), at Pensacola, this 22d day of November, A. D. 1882.

(Signed) F. E. DE LA RUA, [SEAL.]

*Keeper of Public Archives, West Florida.*

Endorsement: Filed March 8th, 1883. (Signed) W. W. Wharton, clerk "circuit court."

23 EXHIBIT D. Exhibits filed in evidence on the trial of this cause.

Be it known that I, Maria Moreno, widow of Gabriel Rivas, testamentary executrix and guardian of my minor children, do grant by these presents that I sell really and in fact to Edward Towns & Co. a house constructed upon a quarter of lot known by the number one, containing forty feet front on the bay by the actual depth at present, situated at the corner of the said bay and square of Ferdinand seventh, bounded on one side by house and lot belonging to Augustin Valverde, and on the west by another of Francis Bond, it being the same which I obtained of my deceased husband, and in view of the authority conferred upon me by decree of this tribunal, bearing date 12th instant, I sell the said house and quarter of lot to the aforementioned Edward Towns & Co., free from incumbrance or mortgage, none appearing on the records of this office, for and in consideration of the sum of one thousand and five hundred dollars, to be paid in the manner following: One thousand and two hundred dollars cash, the receipt whereof is hereby acknowledged, and three hundred payable in one year from the date of these presents, the said house and quarter of lot remaining subject to the payment of the said sum of money until the whole be paid. By means of which I relinquish and separate myself of the right of property, possession, interest, claim, and demand which over the said house and quarter of lot I had and held as heir and guardian of my said children, and I do hereby cede, renounce, and transfer
24 the same unto the purchasers, their heirs, executors, and assigns, so that as true owners thereof they may enjoy, possess,

sell, exchange, or dispose of the said premises at their will, in virtue of this deed which I execute in their favor in token of real delivery, whereby it is shown that they have acquired possession of the above-granted premises without the receipt of any further proof with which I relieve them, and I bind myself to the eviction, security, and warranty of this sale in due form of law with my property present, and to have, granting hereby as inserted, the clause of guarantee which empowered the justice to cause it to be executed, in order to compel me to its fulfil-ment. And I, Edward Towns & Co., being present at the making of this deed, do accept the same in my favor, receiving therefrom the said house and quarter of lot as purchased for the sum and agreeably as sold, acknowledging the same to be placed at my disposal, and in virtue thereof I give a receipt and discharge in full.

In testimony whereof the present is done at the city of Pensacola on the thirteenth day of August, one thousand eight hundred and seventeen.

I, Don Joseph Marot, colonel of the royal corps of artillery, political and military governor of the province of West Florida, do hereby certify that I know the parties who have thus acknowledged and signed the foregoing, being instrumental witnesses, Antonio Molina, Miguel Bélancourt, and Eugene Corindes, and of assisting witnesses for want of an escribano, Domingo Sausa and Joseph Cevallos, who hereunto sign with me, Mary Moreno, Edward Towns & Co. For my wife, Polly Rivas, Joseph E. Caro, as father of my minor children, Ramon Vilatta, Gabriel Rivas. For my wife, Angela Rivas, Fernando Moreno, Eugenio Antonio Sierra. Before me, Joseph Masot, Domingo Sausa, Joseph Cevallos.

NOTE.—There is an acknowledgment made and signed by Mary Mareno, declaring to have received the said sum of three hundred dollars, as mentioned in the preceding deed of conveyance, and, further, that the premises pledged are free from all responsibility and in perfect use by virtue of the payment thereof.

Done at the city of Pensacola, on the 13th day of August, 1818.

(Signed) WIDOW RIVAS.

Witness:

(Signed) JOS. E. CARO. [L. S.]

STATE OF FLORIDA, *Escambia County:*

I, F. E. de la Rua, keeper of the public archives of West Florida, do hereby certify that the foregoing is a true and correct copy of the deed from Maria Moreno, Widow Rivas, ex'x, etc., to Edward Towns & Co., as the same remains of record in my office in deed book R, at pages 62 to 63.

Witness my hand and private seal (my seal official being lost or misplaced), this 22d day of November, A. D. 1882, at Pensacola.

(Signed) F. E. DE LA RUA, [SEAL.]

*Keeper of the Archives of West Florida.*

Endorsement: Filed March 8th, 1883. (Signed) W. W. Wharton, clerk circuit court.

26 EXHIBIT E. Exhibits filed in evidence on the trial of this cause.

This indenture, made this — day of November, A. D. 1823, between John Edgely & John Simpson and James Rushton, Jr., of the other part, all of the city of Pensacola, witnesseth: That for and in consideration of the sum of three thousand five hundred dollars, lawful money of the United States, in hand paid, the receipt whereof is hereby acknowledged, the said John Edgely, in his own right and as surviving partner of the late firm of Towns & Edgeley, and John Simpson have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said James Rushton a part of a certain lot of ground in the city of Pensacola, known and designated in the plan of the said city as No. one, and situated at the corner of Palafox street, to wit, forty feet front on the bay and running back to that part of the *the* same lot purchased by John Larnsen, together with all and singular the appurtenances to the said piece or parcel of ground belonging or in anywise belonging. To have and to hold the said piece or parcel of ground to the said James Rushton, his heirs, executors, or administrators and assigns, the said John Edgely doth individually warrant against the claim or claims of all and every person or persons whatsoever.

In testimony whereof the said John Edgeley and John Simpson have set their hands and affixed their seals, the day, month, and year aforesaid.

(Signed) JOHN EDGELEY. [SEAL.]
(Signed) JOHN SIMPSON. [SEAL.]

Signed, sealed, and delivered in the presence aforesaid—
(Signed) JOS. M. WHITE.
(Signed) JAS. FINLAY.

27 TERRITORY OF FLORIDA, *Escambia County:*

Before me, John Miller, clerk of the court of the county aforesaid, personally appeared John Edgely and John Simpson, & acknowledged the foregoing instrument of writing to be their act and deed, and desired that the same might be recorded as such.

Acknowledged before me, 13th November, 1823.

(Signed) JOHN MILLER, *Clerk.*

STATE OF FLORIDA, *Escambia County:*

I, F. E. de la Rua, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the foregoing is a true and correct copy of the deed from John Edgely and John Simpson to James Rushton, as the same remains of record in my office, in deed book A, at page 127 to 128.

In witness whereof I hereunto set my hand and seal official at Pensacola, this 22d day of November, A. D. 1882.

[SEAL] F. E. DE LA RUA,
*Clerk Circuit Court Escambia County, Fla.*

Endorsement: Filed March 8th, 1883. (Signed) W. W. Wharton, clerk circuit court.

F.

Public archives of West Florida, first volume, record of proceedings, before the U. S. commissioner, pages 251 & 252, show:

"The claim of John Edgeley, in his own right and as surviving partner of Edward Towne, dec'd, to a part of lot No. 1, being the eastern corner, was then taken up for examination, and the following title papers, and testimony exhibited in support thereof, to wit:

"A copy of an original grant made to William Shaw and Henry Stuart of the whole of lot No. 1 by George Johnston, governor general and commander-in-chief of the province of West Florida, countersigned by Alexander McLelland, deputy secretary, and dated the 3d day of October, 1765, certified to be a true copy, under the seal of office, by John McLean, Commissioner of the General Land Office, at Washington city, on the 3d day of June, 1823.

"(NOTE.—This grant is not on record, but was exhibited by the claimant on this day.)

"Also a copy of a mesne conveyance from John Stephensen to Joseph Colbert of the whole of the said lot, passed before Governor O'Neill on the 22d of October, 1781, certified to be a true copy by Joseph E. Caro, keeper of the public archives, on the 22d of February, 1823.

"Also, a copy of a private mesne conveyance from Joseph Colbert to Benito Caro dated the 7th of August, 1787, and attested by Bessito Gayar, Joseph Domingo, and Joseph Suares Falcon; certified to be a true copy by Joseph E. Caro, keeper of the public archives, on the 22d February, 1823.

"Also, a copy of a mesne conveyance from Benito Caro to
29 Gabriel Rivas, passed before Governor of Florida and the assistant witnesses Begnigno Garcia Calderon and Milan de la Carera on the 24th July, 1797; certified to be a true copy on the 16th August, 1797. Also an extract from the protocols, certified to be a true one by Joseph E. Caro, keeper of the public archives, which states that Maria Moreno, Widow Rivas, sold one-half of said lot to John Edgley and Edward Towns on the 13th of August, 1817.

"Joseph E. Caro proved the signatures of Folch, Calderon, & Carrera and recognized his own.

"NOTE.—See the parole testimony adduced in support of the claim of Francisco Bonal to a part of said lot, recorded at page 50, which he believes applies to this claim."

Second vol., record of the proceedings before said commissioner of the United States, at pages 208 & 209, shown in abstract E:

"That John Edgley was the claimant, Maria Rivas the original grantee; that the nature of the claim was a mesme conveyance; the date of claim was July, 1797; the number of the lot No. 1; the dimensions 40 feet front by 120 feet deep; that the conveyance was passed before Governor Folch, and that title was confirmed in John Edgley."

STATE OF FLORIDA, *Escambia County:*

I, F. E. de la Rua, keeper of the public archives of West
30 Florida, do hereby certify that the foregoing are true and corrects extracts from the books & papers of said archives in my charge treating the matter therein recorded.

In witness whereof of my hand and private seal, the seal official being lost or misplaced.

March 8th, 1883.

(Signed) F. E. DE LA RUA, [SEAL.]
*Keeper Public Archives of West Florida.*

Endorsement: Filed March 8th, 1883. (Signed) W. W. Wharton, clerk circuit court.

Exhibits filed in evidence on the trial of this cause:

*Letters of Administration. H.*

In the Matter of the Estate of JAMES RUSHTON, Deceased.

STATE OF FLORIDA, *Escambia County:*

Whereas C. C. Yonge and E. A. Perry, attorneys for said estate, have petitioned that W. H. Hutchinson, sheriff of Escambia county, State of Florida, be appointed as administrator *de bonis non* on said estate, and setting forth that W. W. Carr, dec'd, late administrator on said estate, had died without completing said administration, and that more than six months had elapsed since the death of said W. W. Carr, late administrator, etc. Now, therefore, in compliance with said petition, I hereby appoint W. H. Hutchinson, sheriff of said county, as such adm'r *de bonis non*, and he is hereby authorized and directed to take charge of said estate and duly adminis-
31 ter on the same according to law.

Given under my hand and seal, this 4th day of May, 1881.

[SEAL.] (Signed) N. C. SHACKLEFORD,
*County Judge.*

STATE OF FLORIDA, *Escambia County:*

I hereby certify that the foregoing is a true and correct copy of the original letters of administration granted unto W. H. Hutchinson as the same appears of record and on file in my office.

In testimony whereof witness my hand and seal, this 7th day of March, A. D. 1883.

[SEAL.] (Signed) N. C. SHACKLEFORD,
*County Judge.*

Endorsement: Filed March 8th, 1883. (Signed) W. W. Wharton, clerk "circuit court."

And on the 9th day of March, A. D. 1883, came the defendant herein by his attorney, Wm. Kirk, Esquire, and moving the court for a new trial, filed his motion therefor in the words & figures following, to wit:

*Motion for New Trial.*

W. H. HUTCHINSON, Adm'r & Etc., Estate of James Rushton,
*vs.*
32 JAMES K. JOHNSON.

Ejectment.

The def'ts move for a new trial and for cause say:
1st. That verdict was contrary to law and evidence.
2d. That court erred in instructing jury to find for pl'ff.
3d. That court surprised and placed def'd'ts before jury without testimony or witnessess in taking up case out of regular order on the docket, while in the due course they could and would have had documentary and other evidences excluded by this surprise.
4th. That court erred in excluding evidence from the jury showing that plaintiffs proved title in Hannah Rushton, the heiress of James Rushton, the intestate, after his decease and before administration.
5th. That court erred in not permitting def'd'ts to attack validity of administration from record of county court.

(Signed) WM. KIRK,
*Defend't's Att'y.*

Endorsement: Filed March 9th, 1883. (Signed) W. W.Wharton, clerk circuit court.

And on the 13th day of March, A. D. 1883, came the defendant by his attorneys, B. Labuzan, R. B. Elliott, J. D. Tucker, & J. D. Thompson, Esquires, and filed the affidavit of A. V. Caro herein, in the words and figures following, to wit:

33 *Affidavit of A. V. Caro.*

United States Circuit Court, 5th Circuit, Northern District of Florida.

W. H. HUTCHINSON, Sheriff, and *ex-officio* Administrator of James Rushton, dec'd,
*vs.*
JAMES K. JOHNSON.

Ejectment.

A. V. Caro, being duly sworn, says that he has in his possession the documentary evidence relating to and that are necessary to establish the title of E. J. Caro *et al.* to the property claimed by plaintiff in above suit; that at the time of the trial of said cause he had no opportunity to present the said papers to this court, because the subpœna *duces toecum* was not served upon him until a very short time before he was put upon the witness stand; that the haste with which he was brought into court prevented him from securing said papers, though he used all due diligence to obtain the same. This affiant further says that he had no intimation whatever of the fact

that said case was to be tried on the day that it was until a subpœna was served.

(Signed) A. V. CARO.

Endorsement: Sworn to before me this 13th day of March, A. D. 1883.

(Signed) W. W. WHARTON,
*Clerk Circuit Court.*

34 And on the same day and date came the said defendant, by his attorneys, and filed his further motion for a new trial of this cause in the words and figures following, to wit:

*Defendant's Further Motion for New Trial.*

United States Circuit Court, 5th Judicial Circuit, Northern District of Florida.

W. H. HUTCHINSON, Adm'r, & etc., *vs.* JAMES K. JOHNSON.

Defendant herein moves for a new trial on the following grounds, to wit:

First. That the court erred in its charge to the jury in this: that no matter whether twenty, thirty, or fifty years had elapsed after the death of Rushton and before letters testimentary in his estate, no presumption can arise that his (Rushton's) estate had been settled and the property sued for was vested in the heirs.

2. That defendant and his counsel were taken by surprise, without their fault, and had no opportunity to make a full defence.

(Signed) B. LABUZAN,
*Defendant's Attorney.*

Endorsment: Filed March 13th, A. D. 1883. (Signed) W. W. Wharton, clerk circuit court.

*Motion for New Trial Denied.*

And on the 15th day of March, A. D. 1883, at a stated term of said court, the said motion for a new trial, being argued and
35 submitted to the court, was denied by the court; whereupon, on the 17th day of March, A. D. 1883, came the said defendants, by their attorney, B. Labuzan, Esquire, and filed their notice of motion for an appeal to the Supreme Court of the United States in this cause, in the words and figures following, to wit:

*Notice of Motion for Appeal.*

WM. H. HUTCHINSON, Adm'r, &c.,
*vs.*
JAS. K. JOHNSON. } No. 27.

Ejectment.

Defendant, by his attorney, hereby gives notice of motion for an appeal to the Supreme Court of the United States.

March 17th, '83.

(Signed) B. LABUZAN,
*Defendant's Attorney.*

And on the said last-mentioned day and date the aforesaid defendants by their said attorney, B. Labuzan, Esq., filed *his* motion of appeal to the Supreme Court of the United States, in the words and figures following, to wit:

*Motion for Appeal.*

United States Circuit Court, 5th Judicial Circuit, Northern Dist. of Fla.

WM. H. HUTCHINSON, Sheriff and Adm'r *de bonis non* of James Rushton, Dec'd,
*vs.*
JAMES K. JOHNSON. } No. 27.

Ejectment.

Defendant, having in open court given notice of motion of appeal to the Supreme Court from the judgment rendered in the above cause, now moves the court for leave to appeal the said cause to the Supreme Court of the United States, and for an order of this court granting to defendant ninety days from the date of entry of this motion within which to furnish the requisite bond and to perfect his appeal.

36.

17th March, 1883.

(Signed) B. LABUZAN,
*Defendant's Attorney.*

Endorsement: Filed March 17th, 1883. (Signed) W. W. Wharton, clerk circuit court.

And thereafter, to wit, on the 30th day of April, A. D. 1883, came the said defendants, by their attorneys, and filed their prayer for a writ of error in said cause, in the words and figures following, to wit:

*Prayer for Writ of Error.*

United States of America, Northern District of Florida.

To the Honorable Justices of the Supreme Court of the United States:

And now comes James K. Johnson, a citizen of Florida, and E. J. Caro, Matilda C. Duval, and Irene C. Williams, citizens of Alabama, by their attorneys, B. Labuzan, Elliott, Tucker, & Thompson, and complain that in the record and proceedings and also in the rendition of judgment in a suit between Wm. H. Hutchinson, sheriff, *ex officio* administrator *de bonis non* of the estate of James Rushton, deceased, plaintiff; and said James K. Johnson and E. J. Caro, Matilda C. Duval and Irene C. Williams, defendants, tried in the circuit court of the United States for said district, at the March term thereof, A. D. 1883, at Pensacola, Florida, and in which judgment was rendered against said defendants, on the 8th day of March, A. D. 1883, manifest error hath occurred and happened, to the great damage of said defendant-.

37 Wherefore they pray for the allowance of a writ of error, and such other process as may cause the same to be corrected by the Supreme Court aforesaid.

April 30th, 1883.

(Signed) B. LABUZAN.
(Signed) ELLIOTT, TUCKER & THOMPSON.
(Signed) A. SHAW.

Endorsement: Filed April 30th, 1883. (Signed) W. W. Wharton, clerk.

And thereupon on the 30th day of April, A. D. 1883, there issued out the clerk's office of the aforesaid circuit court a writ of error in this cause in the words and figures following, to wit:

*Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the northern district of Florida, Greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Wm. H. Hutchinson, sheriff, *ex-officio* administrator *de bonis non* of the estate of James Rushton, deceased, defendant in error, and James K. Johnson, and E. J. Caro, Matilda C. Duval, and Irene C. Williams, plaintiffs in error, a manifest error hath happened, to the great damage of the said James K. Johnson, E. J. Caro, Matilda C. Duval, and Irene C. Williams, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judg-
38 ment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 30th day of April, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and seventh.

[L. S.] (Signed) W. W. WHARTON, *Clerk.*
By JAMES L. ROCHE,
*Deputy Clerk, Circuit Court, Fifth Judicial Circuit,*
*Northern District of Florida.*

Endorsement: Issued April 30th, & copy filed same date. (Signed) W. W. Wharton, clerk.

And on the second day of May, A. D. 1883, came the said defendants to this cause and filed their bond on writ of error in the words and figures following, to wit:

*Bond on Writ of Error*

Supreme Court of the United States.

39 WM. H. HUTCHINSON, Sheriff, *ex-officio* Adm'r *de bonis non* of James Rushton, deceased, *vs.* JAMES K. JOHNSON *et al.* } No. 27.

Ejectment.

Know all men by these presents that E. J. Caro, Matilda C. Duval, and Irene C. Williams, as principals, and George S. Wells and E. Haines, as sureties, are held and firmly bound unto Wm. H. Hutchinson, sheriff, *ex-officio* adm'r *de bonis non* of the estate of James Rushton, deceased, in the sum of five hundred dollars, to be paid to the said Wm. H. Hutchinson, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and delivered, this 25th day of April, A. D. 1883.

Now the condition of the above obligation is such that whereas the above-bound E. J. Caro, Matilda C. Duval, and Irene C. Williams *hath* prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered at the March term, A. D. 1883, of the circuit court of the United States for the northern district of Florida, at Pensacola, Florida, in an action of ejectment, wherein the said Wm. H. Hutchinson, sheriff, *ex-officio* adm'r *de bonis non* of the estate of James Rushton, deceased, is plaintiff, and the said E. J. Caro, Matilda C. Duval, and Irene C. Williams are defendants:

Now, therefore, if the above-bounden E. J. Caro, Matilda C. Duval, and Irene C. Williams shall prosecute their said writ of error to effect, and answer all costs if they shall fail to make good their
40 plea, then this obligation shall be void; otherwise, to remain in full force and virtue.

(Signed) EDWARD J. CARO, [L. S.]
Pr. J. D. THOMPSON.
(Signed) MATILDA C. DUVAL, [L. S.]
Pr. J. D. THOMPSON.
(Signed) IRENE C. WILLIAMS, [L. S.]
Pr. J. D. THOMPSON.
(Signed) G. S. WELLS. [L. S.]
(Signed) E. HAINES. [L. S.]

Sealed and delivered in presence of—
J. N. MORENO.
L. SHEPARD.

Bond accepted.
(Signed) DON A. PARDEE, *Judge.*

UNITED STATES OF AMERICA,
*Northern District of Florida,* } *ss:*

Geo. S. Wells and E. Haines, who are sureties on the foregoing bond, being duly sworn, say and each for himself saith: That he is worth the sum of two hundred and fifty dollars over and above all his just debts, liabilities and legal exemptions.

(Signed) G. S. WELLS.
(Signed) E. HAINES.

Sworn to and subscribed before me, this 25th day of April, A. D. 1883.

(Signed) W. W. WHARTON, *Clerk*,
By JAMES L. ROCHE,
*Deputy Clerk.*

[L. S.] U. S. Circuit Court Northern District of Florida.

Endorsement: Filed May 2nd, 1883. (Signed) W. W. Wharton, clerk.

41 I, William Wilson Wharton, clerk of the circuit court of the United States in and for the fifth judicial circuit and northern district of Florida, at Pensacola Florida, do hereby certify the above and foregoing, included in pages No. 1 to No. 40, inclusive, to be a true and correct transcript of the proceedings had and judgment entered in the cause of Wm. H. Hutchinson, sheriff and *ex-officio* administrator *de bonis non* of James Rushton, deceased, *versus* Jas. K. Johnson *et al.*, as the same remains on file and of record in my office.

In testimony whereof I hereunto sign my name officially, at Pensacola, Florida, and affix the seal of the said court, this fourth day of May, A. D. 1883.

[Seal U. S. Circuit Court, Northern District of Florida, 5th circuit.]

W. W. WHARTON, *Clerk.*

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the northern district of Florida, Greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you or some of you, between Wm. H. Hutchinson, sheriff, *ex-officio* administrator *de bonis non* of the estate of James Rushton, deceased, defendant in error, and James K. Johnson and E. J. Caro, Matilda C. Duval, and Irene C. Williams, plaintiffs in error, a manifest error hath happened to the great damage of the said James K. Johnson, E. J. Caro, Matilda C. Duval, and Irene C. Williams, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you

send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceeding aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

43 Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 30th day of April, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and seventh.

[Seal of the U. S. Circuit Court, Northern District of Florida, 5th Circuit.

W. W. WHARTON,
*Clerk Circuit Court, Fifth Judicial Circuit,*
*Northern District of Florida.*
By JAMES L. ROCHE,
*Deputy Clerk.*

44 [Endorsed:] United States Supreme Court, fifth judicial circuit, northern district of Florida. No. 27. Wm. H. Hutchinson, sheriff, *ex-officio* adm'r *de bonis non* of estate of James Rushton, deceased, *vs.* James K. Johnson and E. J. Caro, Matilda C. Duval, and Irene C. Williams. Writ of error issued & copy filed. B. Labazan, Alfred Shaw, Elliott, Tucker and Thompson, attorneys for plaintiffs in error.

[Stamp:] Clerk's office, U. S. courts. Filed Apr. 30th, 1883. W. W. Wharton, clerk.

45 UNITED STATES OF AMERICA, *ss:*

To Wm. H. Hutchinson, sheriff, *ex-officio* administrator *de bonis non* of the estate of James Rushton, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Florida, at Pensacola, wherein James K. Johnson, a citizen of Florida, and E. J. Caro, Matilda C. Duval, and Irene C. Williams, citizens of the State of Alabama, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 1st day of May, in the year of our Lord one thousand eight hundred and eighty-three.

DON A. PARDEE, *Judge.*

46 [Endorsed:] United States Supreme Court, fifth judicial circuit, northern district of Florida. No. 27. James K. John-

son, E. J. Caro, Matilda C. Duval, and Irene C. Williams *vs.* Wm. H. Hutchinson, sheriff, *ex-officio* adm'r *de bonis non* of the estate of James Rushton, deceased. Citation. B. Labazan, Alfred Shaw, and Elliott, Tucker and Thompson, attorneys for plaintiffs in error.

[Stamp:] Clerk's office, U. S. courts. Filed May 2nd, 1883. W. W. Wharton, clerk.

Northern District of Fla., at Pensacola.

Executed the within writ of citation by serving copies of same on Wm. H. Hutchinson, administrator, &c., and E. A. Perry, Esq., attorney for defendants, this 5th day of May, at Pensacola, in the northern district of Florida, in the year of our Lord one thousand eight hundred and eighty-three.

JOS. H. DURKEE,
*U. S. Marshal.*
By FRANK MAURA, *Deputy.*

[Endorsed:] United States circuit court, fifth judicial circuit, nor. dist. of Florida. Wm. H. Hutchinson, sheriff, *ex-officio* adm'r *de bonis non* of estate of Jas. Rushton, dec'd, *vs.* Jas. K. Johnson *et al.* Transcript of record.

Endorsed on cover: N. Florida, C. C. U. S. No. 254. James K. Johnson, E. J. Caro, Matilda C. Duval, and Irene C. Williams, plaintiffs in error, *vs.* William H. Hutchinson, sheriff, *ex-officio* administrator *de bonis non* of the estate of James Rushton, deceased. Filed 11th August, 1883.